



## EXECUTIVE BRANCH ISSUES STATEWIDE POLICY ON SEPARATION AGREEMENTS

A statewide policy on separation agreements was issued on March 10 to clarify questions concerning the appropriate use of separation incentives and to maintain consistent practice in the use of such agreements. All departments must follow this policy when entering into separation agreements.

### **Executive Branch Policy Concerning Separation Agreements**

Executive branch departments are authorized to enter into a separation incentive agreement with employees in the state personnel system only if the following conditions apply:

- o Pursuant to State Personnel Board Rule R-7-21 a separation incentive agreement may be offered to an employee when a layoff is in progress or, after March 30, 2003, when a layoff is anticipated;
- o The layoff is the result of a need to achieve a permanent reduction in personal services within the department;
- o The employee has retention or "bumping" rights which would reduce any personal services savings associated with his or her layoff or when it results in the same savings and eliminates further bumping;
- o The personal services savings that result from the separation of the employee is realized by the end of the next fiscal year and is greater than the cost to the department of the separation (i.e., the cost of the separation agreement plus any related payouts for unused vacation or sick leave);
- o The cost to the department of the separation incentive, including leave payouts, can be funded from within the department's base appropriation;
- o The Director establishes the parameters for the maximum amount of money the employee can receive. Currently, the established maximum amount is limited to one week of salary for each full year of uninterrupted state service, up to a maximum of 27 weeks. Additionally, any such separation incentive shall not exceed 25% of annual salary;
- o The executive director of the department documents that the separation agreement meets the above criteria; and
- o The agreement is approved by the State Controller's Office.

Any separation agreement that does not satisfy the conditions above must be pre-approved by both the Director of the Governor's Office of State Planning and Budgeting and the Director of the Department of Personnel and Administration.

### **INSIDE *THE ADVISOR***

<b>News Briefs.....</b>	<b>Page 2</b>
<b>Benefits Survey Results.....</b>	<b>Page 2</b>
<b>Pay Date Shift Q &amp; A.....</b>	<b>Page 3</b>
<b>Substance Abuse Treatment &amp; Recovery.....</b>	<b>Page 4</b>
<b>Potential Liability of Using Independent Contractors.....</b>	<b>Page 5</b>
<b>Risky News.....</b>	<b>Page 6</b>
<b>HIPAA Preparedness.....</b>	<b>Page 7</b>
<b>FMLA &amp; HIPAA.....</b>	<b>Page 7</b>
<b>457 Plan Update.....</b>	<b>Page 8</b>
<b>Leave for Intermittent Disaster Response Personnel.....</b>	<b>Page 10</b>

# BULLETIN NEWS BRIEFS

- The Personal Services Contracts PCP training has been updated. DHR will begin offering two levels of training, a basic and advanced level, starting in June 2003. For those professionals currently certified in PCP Contracts, you will have one year to complete Level 2 Advanced training to retain current certification.
- Job Evaluation & Compensation PCP is scheduled for May 8 and 9 in Denver. The class will begin at 9:00 a.m. on Thursday, May 8th and will be held in Room 220 at 1313 Sherman Street. The course will finish by 3:00 p.m. on Friday the 9th. Attendees should call or email Judi Karg at 303-866-2391 or [judi.karg@state.co.us](mailto:judi.karg@state.co.us) to reserve a slot in the class. Other questions should be referred to Don Fowler at 303-866-4250 or [don.fowler@state.co.us](mailto:don.fowler@state.co.us).
- The Personnel Board adopted rules in January that were effective March 30, 2003. These rules are R-1-4, R-1-9, R-1-11, R-6-4, R-6-9, R-6-12, R-7-12, R-7-13, R-7-21, R-8-22, R-8-30, R-8-32, R-8-38, R-8-42, R-8-46, R-8-49, R-8-53, R-8-54, R-8-58, R-8-60, R-8-60, R-8-62, R-8-63, R-8-65, and R-8-67.
- The reception for the Governor's STAR Awards winners will be held on May 8 at the Adam's Mark Hotel. This is in conjunction with Public Employee Recognition Week (May 5-9). Registration for and information about the luncheon are available on the DPA website: [www.state.co.us/dpa](http://www.state.co.us/dpa).
- New class conversion database released. Because of changes and improvements to the job evaluation system over the years and the fundamental role classes play in other human resources processes, the need for tracking and viewing those changes is very important. A class conversion history database has been created to view those changes. Currently, the database contains data from 1990 to current. This database is meant to serve as a guide. If you intend to use this database for official business purposes (for example, processing employee retention rights in a layoff situation) it is suggested that you confirm any results with EMPL system records and other personnel records.

To learn more about these and other personnel, risk management, benefits and C-SEAP policies and issues, go to [www.state.co.us/dhr](http://www.state.co.us/dhr) and be sure to check the "News Archive" section under Quick Links.

## SURVEY RESPONSE IS LOUD AND CLEAR

BY THE EMPLOYEE BENEFITS UNIT

When Employee Benefits asked state employees to participate in a survey of those who waived state medical coverage, they believe a response rate of 30% would constitute a valid sample from which they can reach conclusions. When 45% of the targeted group responded and many others called or wrote asking to participate, they realized that many employees were eager to tell their story. When the online version of the survey was posted in March, 1,122 responses were received the first day. By the time the survey was taken down the end of March, over 3,500 had been received online.

At the same time, Employee Benefits began to receive complaints that the survey didn't include a space for "comments." In response, Employee Benefits encouraged those who wished to register their comments to do so by e-mail. Many did. While some of the commentary was thoughtful, much was harshly critical. Most expressed frustration over the high cost of

medical benefits. Although not surprised that the subject of medical benefits elicited strong feelings, the Benefits team was struck by the intensity of expression. Some of the commentary, as well as results of the survey, are now posted on the DHR website at [www.state.co.us/dhr](http://www.state.co.us/dhr).

Encouraged by the large number of employees willing to share their concerns and expectations, the Employee Benefits unit plans to keep up the dialogue and engage employees further. It will be necessary to address not only the cost, but the cost drivers. Even if the cost of medical care cannot be meaningfully reduced, Employee Benefits hopes to provide specific tools that employees can use to squeeze more benefit out of their healthcare dollars.

For more information about the survey, contact the Employee Benefits unit at 303-866-3434 or via email at [benefits@state.co.us](mailto:benefits@state.co.us).

# PAY DATE SHIFT Q & A

BY JENNIFER OKES  
CHIEF FINANCIAL OFFICER, DPA

Last month, Governor Owens signed Senate Bill 197, authorizing June's pay date for State employees be moved to the first working day of July for 2003 and every year thereafter. This once a year change is expected to help alleviate the current fiscal year budget shortfall and balance the budget as required by the State's Constitution.

The version of the bill signed into law depicts both the Governor's and the General Assembly's concern in making cuts that carefully try to minimize the impact on state citizens, services, and the state workforce. The following questions and answers will help clarify the details of the new law and its impact on state employees.

## **What does Senate Bill 197 change?**

While many possibilities were originally suggested, SB 197 essentially changes the last June pay date, for both monthly and biweekly employees, to the first working day in July. There are some minor differences for biweekly and monthly payrolls, but basically from this year forward (unless changed by law), the end-of-the-month June payroll will be paid on the first working day of July. This year, employees paid monthly will be paid on Tuesday, July 1, instead of on June 30. Employees paid biweekly will be paid for the pay period ending June 13 on Tuesday, July 1, instead of on June 27.

## **Does this mean employees paid monthly will get two paychecks in July?**

Yes. Employees paid monthly (this year and in future years) will get their June paycheck on the first working day of July and their July paycheck on the last working day of July.

## **What about employees paid biweekly?**

Generally, the bill shifts the pay date for the pay period that normally gets paid at the end of June to the first working day of July, moving one additional biweekly payday into July. This year, employees paid biweekly will get checks on July 1, July 11, and July 25, but not a check on June 27.

## **How exactly will employees be impacted by this change?**

Because each employee has a unique financial situation, it is difficult to make generalizations for all employees. However, SB 197 limits the impact on all employees because it affects only one month (June) each year. Depending upon account balances, employees with end-of-the-month automatic debt payments may have to make arrangements with their banks and/or creditors to adjust their payments for the end of June. In some years, the first business day might fall as late as July 3rd. It is encouraged that employees who have questions or concerns about automatic payments to contact their banks and creditors directly.

It is important to note, however, the Colorado State Employee Credit Union has made the decision to honor all automatic debits scheduled from June 27, 2003 through June 30 2003 for state employees who have direct deposit or payroll deduction with them. This means if a member has an automatic payment that is deducted on the 30th from a CSECU checking or savings account it will be paid when received. For example, if a member has a scheduled mortgage payment due to a mortgage company on June 30th, the credit union will honor that payment. No special requests are needed from members in this regard.

## **Will SB 197 affect my taxable income?**

No. Employees that are paid monthly will still get 12 paychecks each calendar year, this year and in future years. Thus, their yearly taxable income will not be affected. SB 197 will not affect the yearly taxable income of employees paid biweekly either.

## **Will SB 197 affect my PERA service credit or my highest annual salary calculation?**

No. PERA computes service credit and salary based on the dates that services are performed; therefore, SB 197 will not affect an employee's service credit or highest annual salary.

## **Will this change affect the state's match to my 401(k) or 457 plan?**

No. The State will still contribute the same yearly amount.

## **Does the change really save the state?**

It is an option that provides the state a one-time savings of nearly 100 million in General Fund dollars while keeping to a minimum the impact on services and citizens. Without SB 197, that money would have to come from somewhere else in the General Fund, and at this late stage of the fiscal year, such cuts would almost certainly result in additional program cuts and potential layoffs this fiscal year.

## **Does the change impact the state's financial reporting?**

The state's general purpose financial statements will continue to follow Generally Accepted Accounting Principles (GAAP) as prescribed by the Governmental Accounting Standards Board (GASB). The government-wide financial statements will continue to be reported using the full accrual basis of accounting. The fund financial statements will continue to be reported using the modified accrual basis of accounting. However, this bill will require a change in how we report the budgetary statements in order to report payroll on the cash basis of accounting. The pay date shift will require some additional accounting entries to achieve the budgetary savings and to ensure accurate financial reporting.

# SUBSTANCE ABUSE TREATMENT & RECOVERY

BY MARY FENTON  
C-SEAP COUNSELOR

When employers have some basic knowledge of chemical dependence treatment programs and recovery, they are better equipped to deal with employees recovering from such dependence. It is vital the person feels supported at work. As William Moyers, the Vice President of External Affairs for the Hazeldon treatment center in Minnesota, reports, "addiction is a disease of denial and shame; therefore, employers must take steps to continually empower employees to seek help." The more knowledge managers and supervisors have about treatment and recovery, the more help they can be for recovering employees and the entire workforce.

Employees who choose a path to recovery from chemical addiction face a range of treatment and emotion. Employees will likely be referred to a licensed facility that is covered by their health insurance policy and in their area. Once referred, an employee will receive an in-depth evaluation, including a psychosocial history, a substance use and abuse history with thorough and valid diagnostic testing to determine which of several levels of treatment best fits his or her need.

Treatment centers specific to treating chemical dependency employ multidisciplinary teams, including medical doctors, nurses, social workers and certified addiction counselors. This staff of professionals assures the treatment of the person as a whole, as well as assesses how much of his or her environment may be contributing to the problem.

The level and type of treatment the employee undergoes will depend on all of the evaluation results. The most intensive level is short or long-term residential care. This is when the employee lives at the center for whatever length of time the team deems necessary. In these cases, medical leave is sometimes utilized. Other less intense forms of treatment are intensive outpatient, consisting of several evenings per week, or intensive day care, in which patients return home at night. All levels of treatment include individual and group education and therapy. After completion of these phases, usually an aftercare plan is established for the recovery process to continue.

Once an employee has become clean and sober, it is a lifetime challenge to remain so. The period of treatment is just a beginning. Most treatment facilities encourage individuals to participate in outside meetings of Alcoholics Anonymous and/or Narcotics Anonymous. These are community meetings, which help support the lifelong process of sustained sobriety.

These meetings are not for everyone, but they have been lifesaving for millions of people. They are based on a spiritual foundation, and are usually one hour in duration. They are free except minimal voluntary donations. Big cities have these meetings in different areas around the clock. They are a great way to stay in contact with like-minded people as well as provide relapse prevention ideas. Often, the best help comes from others who "have been there, and done that."

The main ingredients for sustained sobriety are a support system and a changed and healthy lifestyle. Although managers and supervisors have no need to know the specific details of their employees' addiction and recovery, they can be an integral support by knowing what the employee is going through and what to expect.

If you suspect an employee may need help with chemical dependence or for a range of services in your area, please contact C-SEAP at 303-866-4314 or 1 800-821-8154.

## C-SEAP OFFERING ANGER EDUCATION CLASSES

Do you feel irritable? Have you noticed having less patience with people or yelling more? Are you being told to "calm down" or that you always "seem so angry?" If so, C-SEAP's Anger Education class may help. We will focus on anger issues that affect our work and personal lives and how to better manage them.

### DENVER FOUR-SESSION CLASS:

**May 8, 15, 22 & 29**

Sessions are 9:00 a.m. – 10:30 a.m. at 225 East 16th Avenue, Suite 600. Participants should plan to attend all sessions. Call 303-866-4314 or 1 800-821-8154 to register.

### PUEBLO ONE-SESSION CLASS:

**May 10**

This session is from 10:00 a.m. – 4:00 p.m. at Pueblo Community College. Call 719-549-3079 or 1 800-821-8154 to register.

Anger Education is also offered in other areas of the state on a periodic basis. Call C-SEAP at 303-866-4314 or 1 800-821-8154 for more information.



# POTENTIAL LIABILITIES OF USING INDEPENDENT CONTRACTORS

BY SUE HUANG & JOI SIMPSON  
DHR TOTAL COMPENSATION/SYSTEMS TEAM

Due to the budget reductions, the layoff process has started. As a result, some agencies are considering immediately re-hiring laid-off employees from temporary employment services as independent contractors to perform the same or similar work performed as employees. This practice is not permitted under federal and state law and will expose the state to greater potential liability.

Agencies looking to solve their staffing issues with temporary or contingent workers must consider the legal implications of the employer-employee relationship. Relevant factors must be examined to make sure that this type of action does not create potential liability for the state and agencies. Potential liabilities are as follows:

- Under FLSA, penalties for mischaracterization of an independent contractor could include unpaid overtime or minimum wage, liquidated damages, fines, and criminal sanctions. These could triple if the violation is willful and personal liability could be pursued.
- Under the IRS, a percentage of an agency's payroll could be assessed (this fine could triple if the action is done willfully), as well as FICA penalties and potential litigation settlements.

When considering the utilization of contractors, be aware that converting a state employee or a state temporary employee to an employee performing the same function on a personal service contract could violate state law. CRS 24-18-201 prohibits an employee from being retained via a personal services contract within six months of termination. CRS 24-50-507 prohibits employees from accepting any direct or indirect personal benefit from a contracting agency. In other words, an employee cannot obtain a contract with the state to perform work that he or she had a direct interest in, e.g., the job.

If the state hires laid-off employees within six months to continue to perform the same or similar work prior to lay-off, they cannot be considered independent contractors. These individuals will be eligible for benefits, and could have standing to pursue legal action against the state. In addition to agencies being held liable for flagrant violations of federal and state law, individuals who willfully violate the rule in approving such actions could be held personally liable and incur the same fines and penalties.

Current employees are unlikely to qualify as independent contractors. Here are three key

determining factors when qualifying an individual as an independent contractor.

1. Behavior control – Does the employer direct or control how the worker performs the task? Generally, someone who is told when, where and how to perform the work, what tools or equipment to use, what workers to hire, where to purchase supplies, and the order in which to do the work, should not be considered an independent contractor.
2. Financial control – What is the worker's investment in the facilities he or she uses, to what extent is the worker making his or her services available to other organizations, how is the worker paid, and can the worker realize profits and losses from the services provided to the state? If one invests in the facilities and tools used, and if one's service is also available to others, this worker may be considered an independent contractor.
3. Nature of the relationship – Is the organization providing benefits to the worker, are taxes being withheld from the worker's pay, are employer's taxes being paid on behalf of the worker, is the relationship expected to continue indefinitely, and is the service provided by the worker essential to the regular business of the organization? If so, the worker may not be considered an independent contractor.

The following is the common law test most courts continue to apply.

- The greater the skill required to do the job, the more likely the individual is an independent contractor.
- Individual supplies his or her own tools and materials.
- The longer the relationship, the more likely there is an employer-employee relationship.
- The fact that the person who pays for the work has the right to assign additional projects to the worker without additional compensation and without altering the terms of a contract indicates employee status - an independent contractor relationship is generally contractual.
- An employer who determines the work schedule suggests an employment relationship.
- An individual who is paid by the hour or other time period is more likely to be considered an employee.
- Where the employer hires, fires, and pays the

“Independent Contractors” continued on page 8

# RISKY NEWS

## WHERE WORKPLACE LITIGATION, INSURANCE, SAFETY AND LOSS CONTROL ARE IMPORTANT PERSONNEL MATTERS

BY TOM BELL  
SAFETY & LOSS CONTROL SPECIALIST

### REQUIRED STATE AND FEDERAL POSTERS AVAILABLE ONLINE

It is spring again when companies want you to buy the required state and federal posters from them. State Risk Management has an easy and free alternative to expensive posters this year. We now have ALL required posters online at our website: [www.state.co.us/dhr](http://www.state.co.us/dhr) (under "Risk Management"). Just click on the links for each poster and you can print or save them.

If you have problems downloading or printing the posters, please contact Tom Bell at 303-866-4293 or [tom.bell@state.co.us](mailto:tom.bell@state.co.us).

### STATE DEPARTMENTS ATTEND ANTI-TERRORISM PROGRAM

Representatives from several state agencies attended an anti-terrorism conference held at the state fairgrounds in Pueblo on April 10th. The conference was titled "Terrorism: What Every Colorado Employer Should Know".

The morning session was a panel of federal government officials who discussed the roles of their agencies in planning for terrorist attacks. Pete Bakerski described what the Federal Emergency Management Agency (FEMA) does to help prepare for a possible terrorist attack. FEMA is now part of the Department of Homeland Security. Their Federal Emergency Response Plan included twelve elements: Transportation, Communication, Public Works and Engineering, Firefighting, Information and Planning, Mass Care, Resource Support, Health and Medical Services, Food, Energy and Hazardous Materials.

FEMA handles two levels of events: emergencies and major disasters. Emergencies are localized and not as large as major disasters. The average annual cost for emergencies and major disasters in the U.S. is \$3 billion.

Dave Ippolito of the Occupational Safety and Health Administration (OSHA) discussed his agency's role in responding to terrorism. OSHA responded to the 9-11 attacks by providing safety consultation, safety equipment and testing of hazards at the World Trade Center site. During the Anthrax incidents, OSHA provided testing of large facilities such as post offices.

OSHA fields a Health Response Team which responds to large hazardous material spills. They are working on personal protective equipment guidelines for weapons of mass destruction, and they are helping develop regional emergency management plans.

Here are some emergency tips from OSHA:

- Have evacuation plans for any emergency, including terrorist attack.
- Assign roles for evacuation, such as building and floor wardens.
- Identify emergency numbers for all types of emergencies.
- Have a written emergency evacuation plan.
- Train employees with evacuation drills.
- Make sure your alarm system is operating properly.
- Coordinate with outside responders, like your local fire department.

An emergency action plan should consider worst-case scenarios and include procedures for handling visitors.

Joe Arey of the Federal Bureau of Investigation (FBI) presented information on terrorism. Domestic terrorists are confined to the U.S. and territories. There are left-wing and right-wing extremist terrorist groups. There are also "special interest" domestic terrorist groups, such as extremist environmental groups and extremist anti-abortion groups. International terrorist groups can be state-sponsored or independent terrorist groups. The most difficult terrorist group for the FBI are "rogue terrorists", individuals or very small groups who are difficult to identify, such as Tim McVeigh.

The FBI performs threat assessments of terrorist groups and participates in the Joint Terrorism Task Force with state and local law enforcement agencies.

The afternoon session consisted of a panel of state and local government officials. Tommy Grier of the Colorado Office of Emergency Management (OEM) described terrorism as "another facet" of emergency planning, which must address all types of hazards. He stressed public education and noted there is information on their website [www.dola.state.co.us/oem/oemindex.htm](http://www.dola.state.co.us/oem/oemindex.htm).

Robin Koons of the Department of Public Health and Environment gave a presentation on bioterrorism. There

"Risky News" continued on page 9

# HIPAA IS HERE: BE PREPARED

BY THE EMPLOYEE BENEFITS UNIT

The Employee Benefits unit and departments that have been delegated benefits administration are a "hybrid covered entity" under the Health Insurance Portability & Accountability Act (HIPAA) of 1996. As such, we must all continue to take arduous steps to protect and guard against the misuse of identifiable protected health information (PHI).

Covered entities may use and disclose protected health information for the following purposes:

- Treatment, payment and health care operations;
- To the individual who is the subject of the information;
- Workers' compensation purposes (pursuant to 45 CFR 164-512 (1)),

As of April 14, 2003, all departments that have access to PHI must have taken all reasonable steps to protect this information. The following questions will help departments determine if they are in compliance:

- Have all of your employees signed confidentiality statements?
- Are your records containing PHI kept in a locked cabinet?
- Do your computers have password protection to prevent unauthorized access to PHI?
- Are all agency computers positioned to prevent unauthorized viewing of the PHI?

The Employee Benefits unit will be conducting HIPAA training at 9 a.m. on May 7th, 2003, at the Colorado Mental Health Institute (Ft. Logan) Auditorium.

Following are three websites that you can access to find the most updated information on HIPAA in Colorado and nationwide.

[www.sco.state.co.us/HIPAA/HIPAA.htm](http://www.sco.state.co.us/HIPAA/HIPAA.htm)  
[www.cdphe.state.co.us/HIPAA](http://www.cdphe.state.co.us/HIPAA)  
[www.hhs.gov/ocr/hipaa/](http://www.hhs.gov/ocr/hipaa/)

For more information about HIPAA, contact the Employee Benefits unit at 303-866-3434 or via email at [benefits@state.co.us](mailto:benefits@state.co.us).

# HIPAA AND FMLA: CONFIDENTIALITY DIFFERENCES

BY LAURIE BENALLO  
FMLA COORDINATOR

With all of the attention on HIPAA's Privacy Rule, it is important to understand how this rule impacts other employment laws, such as FMLA. Any records obtained containing personal health information (PHI) used strictly in the role as an employer (for employment purposes) are not subject to the rule.

What does this mean to other state agencies where FMLA is concerned? First, you must determine if the information is obtained or transmitted for employment reasons or for treatment, payment, or health care operations. It is important to recognize when the information is protected under HIPAA and when it is not.

Often agency HR professionals become involved in eligibility issues, insurance claim issues where employees question the denial of a claim or ask for assistance in resolving a claim issue. These are examples of when the Privacy Rule would apply.

If personal health information is provided by the employee to document reasons for leave requests, such as submitting a doctor's statement to support the use of sick leave or for the results of a fitness for duty exam, that information is part of the employment record and is not protected health information under HIPAA's Privacy Rule.

Don't forget, however, that FMLA and ADA have their own set of confidentiality requirements. Any records or documents relating to medical certifications, re-certifications, or medical histories of employees or employees' family members that contain health information used for FMLA purposes must be kept in files separate from the personnel files. These medical documents must also be kept in a locked cabinet, with limited access. Employees handling such records should sign confidentiality agreements and agencies should also have confidentiality policies.

For more information about FMLA, contact Laurie Benallo at 303-866-4247 or [laurie.benallo@state.co.us](mailto:laurie.benallo@state.co.us).

# NEW FUNDS COMING TO 457 PLAN

Based on information and recommendations from the 457 Match Plus' Investment Advisor, Arnerich Massena, plan administrators have decided to terminate both the T. Rowe Price International Fund and the Dreyfus Premier Balanced Fund effective May 27, 2003.

The American Funds Europacific will replace the T.Rowe Price International Fund.

The Moderate Profile Fund will replace the Dreyfus Premier Balanced Fund.

Additional information regarding requirements to move balances will be sent to all participants with balances in the terminated funds the week of April 21, 2003.

If you have any questions regarding this information, please call KeyTalk® at 1-800-838-0457, press option #2 to speak to a State of Colorado 457 Match Plus Account Executive. Additional general information regarding the 457 Match Plus can be found on the Plan's website at [www.colorado457.com](http://www.colorado457.com).

## "Independent Contractors" continued from page 5

individual's assistant (rather than the worker himself or herself), suggests an employee-employer relationship.

- An individual who works in a field that is not the company's ordinary line of business will be more likely be an independent contractor.
- The fact that a worker is in business for himself or herself and has all the appropriate licenses suggests independent contractor status.
- The fact that a worker is treated as an employee for tax purposes indicates an employment relationship.
- Where an individual is integrated into the employer's business to a great extent, the individual is more likely to be considered an employee.
- The establishment of a set amount of work hours suggests employee status.
- The fact that an individual works on the employer's premises suggests employee status.
- An individual who works according to a sequence set by the employer will more likely be deemed an employee.
- An individual who is reimbursed for expenses is more likely an employee.
- An individual's work results in the possible realization of a profit or the risk of a loss suggests independent contractor.
- An individual who works for more than one firm at a time is more likely to be an independent contractor.
- The fact that the employer has the right to discharge the individual suggests an employment relationship.

If an agency were to hire a current state employee (permanent or temporary) to perform the same or similar duties, the agency cannot certify that individual as an independent contractor. Although changing current employees to independent contractors may save some costs, this change would be in violation of federal law, state statute and rules and will put the state at risk for legal action, heavy fines, and IRS penalties.

Finally, here is some reference material on independent contractors. An article published by the International Personnel Management Association (IPMA) in August 2001 (page 19) states, "Laws governing independent contractors, designed to protect workers from being short-changed, have drawn increasing scrutiny and significance with the growth of the contingent workforce in recent years. Under federal and state laws, an independent contractor must be just that - independent. He or she must provide a product or service without punching a time clock or being told how to do the job. 'Very few people qualify as independent contractors,' says Eugene Hartwig, an attorney with Butzel Long in Detroit and a former chair of American Bar Association's Section of Labor and Employment Law. One of the key determining factors is behavior control. Does the employer have the right to direct or control how the worker performs the task for which he or she was retained. Generally, someone who is told when and where to do the work, what tools or equipment to use, what workers to hire, where to purchase supplies, and the order in which to do the work, should be classified as a regular employee, not as an independent contractor..."

In the class action lawsuit, *Vizcaino v. Microsoft Corporation*, the court found that Microsoft had mischaracterized certain workers as independent contractors. Such workers were originally hired for specific projects and were not eligible for employee benefits; however, some had been kept on, working on successive projects for a number of years. These employees were fully integrated into Microsoft's workforce, worked on site and on work teams along with Microsoft's regular employees, shared the same supervisors, performed identical functions, worked the same core hours as regular employees, and were provided with admittance card keys, office equipment, and supplies.

For more information contact Sue Huang, Compensation Specialist, 303-866-4219 or [sue.huang@state.co.us](mailto:sue.huang@state.co.us), or Joi Simpson, Personal Services Contracts, 303-866-5496 or [joi.simpson@state.co.us](mailto:joi.simpson@state.co.us).



are three types of biological weapons agents: bacterial, viral, and toxins. Bacterial agents are living one-cell organisms like Anthrax or Tularemia. Viral agents are viruses, which are not living organisms but "genetic material packed in a protein shell" These viruses, like Smallpox or Hemorrhagic Fever virus, are parasites which invade your body's cells. Toxins are chemicals, usually proteins, that are produced by cells themselves, such as Botulism and Ricin. The Department of Public Health and Environment works with the Centers for Disease Control (CDC) and local health departments to identify any potentially harmful biological threats.

Allan Turner of the State Office of Preparedness, Security and Fire Safety discussed the state's Protective Action Plan for various terrorist threat conditions. His office develops plans for the state's continuation of operations in the event of an emergency, and statewide emergency operations plans. Their website is at <http://www.ops.state.co.us/>.

Marty LaRusso of the Aurora Fire Department discussed the Metropolitan Medical Response System (MMRS). There are Metropolitan Medical Response districts in the Denver, Boulder and Colorado Springs metro areas. Fire and police departments, hospitals, ambulance services

and other emergency services throughout the metro area are part of MMRS, and coordinate their efforts in the event of a large emergency such as a terrorist attack. Their email address is [www.mmrs.hhs.gov](mailto:www.mmrs.hhs.gov).

## SARS IN COLORADO

The Colorado Department of Public Health and Environment (CDPHE) has announced that there are currently 8 cases of Sudden Acute Respiratory Syndrome (SARS) in Colorado. All 8 cases are the direct result of travel to the Far East.

CDPHE warns Coloradans to not over-react to SARS. Only people who show SARS symptoms can transmit the disease. Symptoms are: fever of 100.4 degrees Fahrenheit and above and a cough; shortness of breath, or difficulty breathing.

CDPHE advises organizations to not exclude contact with persons returning from the Far East unless they actually have SARS symptoms.

The U.S. Centers for Disease Control (CDC) has information on SARS and the workplace at [www.cdc.gov/ncidod/sars/pdf/workplace.pdf](http://www.cdc.gov/ncidod/sars/pdf/workplace.pdf). A SARS FAQ (frequently asked questions) is at [www.cdc.gov/ncidod/sars/sars-faq.pdf](http://www.cdc.gov/ncidod/sars/sars-faq.pdf).

*Making the most of your limited training dollars*

## Professional Development Center



"Especially in stressful times, when budgets are tight, providing your staff with training and support will help them make the best decisions for your organization." - Richard Pennington, State Purchasing Director

## Do DIFFICULT TIMES MEAN DIFFICULT CHOICES? NOT ALWAYS...

A 5-day leadership training workshop for government from The Performance Institute costs **\$1495** (not including travel)

*versus*

Our 5-day Leadership and Supervisory Programs specifically created for the State of Colorado workforce which only costs **\$725**

## MAKE THE RIGHT CHOICE

[www.state.co.us/dhr](http://www.state.co.us/dhr)

(under training)

**(303) 866-2439**

Access 75 years of combined State employment experience. Choose from a variety of core courses uniquely suited for the State of Colorado workforce or drive organizational change with a flexible, interactive workshop tailored to meet your distinct business needs.

# LEAVE FOR INTERMITTENT DISASTER RESPONSE PERSONNEL

BY LAURIE BENALLO  
FMLA COORDINATOR

The federal Public Health Security and Bioterrorism Preparedness and Response Act of 2002, effective June 12, 2002, coordinates preparedness for and response to bioterrorism and other public health emergencies. Under the act, the National Disaster Medical System (NDMS) may be activated by the Secretary of the Department of Health and Human Services to provide health and human services, to respond to the needs of victims of a public health emergency or to be present at locations determined to be at risk for a public health emergency.

The Act also expands the definition of "uniform service members" under Uniformed Services Employment and Reemployment Act (USERA) to include official intermittent disaster-response members of the NDMS. Individuals appointed to NDMS positions to provide services or participate in response training have the employment and reemployment benefits provided to uniformed personnel and have the same employment protection as other members of the "uniformed services" (e.g. National Guard and Reserves). State employees who provide documentation supporting their appointment to NDMS positions and who are activated when the Secretary activates the NDMS must be given leave. Like absences due to military duty, these absences are not considered a break in service.

The procedures on military leave, including the

temporary policy on administrative leave and leave sharing, do not apply to NDMS absences because this is not military service. Employees should be scheduled to use any earned compensatory time first, and may elect to use available annual leave before being placed on unpaid leave. Employees are not entitled to accrue sick or annual leave while on unpaid leave.

Emergency response personnel under NDMS are entitled to return to employment upon completion of their assignment and submission of a written application to return. Federal law sets specific time periods for return to work. These employees are ineligible for veteran's preference in selection and layoff.

Because of the nature of NDMS emergencies, notice of activation may be short or immediate and may be verbal or written. Agencies are encouraged to plan ahead by identifying employees who are part of the uniformed services and obtaining documentation of their affiliation up front.

The "Technical Assistance on Veterans, Active Military, and National Disaster Response Personnel" has been revised to reflect information on NDMS. This document can be found on the DHR website: [www.state.co.us/dhr](http://www.state.co.us/dhr).

If you have further questions, contact Laurie Benallo at 303-866-2455 or [laurie.benallo@state.co.us](mailto:laurie.benallo@state.co.us).

# THE DEPARTMENT OF PERSONNEL & ADMINISTRATION AND THE JUDICIAL BRANCH

invite you to attend our continuing brown  
bag luncheon series for state mediators

When: 11:30 AM - 1:30 PM  
Monday, May 12  
Tuesday, July 8  
Tuesday, September 9  
Tuesday, November 11

Where: 1313 Sherman St, Rm 318

## PROPOSED TOPICS INCLUDE:

**GENDER & CULTURE**

**NON-CONFRONTATIONAL  
COMMUNICATION**

**GROUP MEDIATION**

(Further details about each luncheon will be  
announced as each date approaches.)

For more information about the luncheon series, the location of future luncheons, the state mediation program or additional training for state mediators, contact Cristina Valencia at 303-866-5383 or [cristina.valencia@state.co.us](mailto:cristina.valencia@state.co.us). Please RSVP to Cristina and remember to bring your lunch.

*Brown* Me  
Alone  
Man right  
NO

Peace is not the absence of  
conflict; It's that state  
when we can deal with  
conflict effectively,  
efficiently and  
respectfully.

-Randolf Lowry

*Wrong* Yes  
Woman  
Group white  
YOU

# *A New Day...*

The sun has set on the status quo.

Fiscal constraints, increased risks, impending retirements, streamlining, technology, outsourcing, and civil service reform are changing the way the state does business.

Right now, it is even more imperative that all appointing authorities, supervisors, human resource professionals, and risk, fleet and facilities managers work together to find innovative solutions to the challenges facing us.



## **THE ANNUAL STATE RISK MANAGEMENT & PERSONNEL CONFERENCE**

*SPONSORED BY THE DPA DIVISION OF HUMAN RESOURCES*

- Attend one-day of the most cost-effective and valuable training available to state professionals
- Learn more about the critical nexus of effective risk management and sound human resources management decisions
- Discover innovative ways to manage your business, motivate your employees and ensure the safety of your operations
- Mark your calendars today!!!

**FRIDAY, OCTOBER 17, 2003**

**THE ARVADA CENTER FOR  
THE ARTS & HUMANITIES**

**ONLY \$35  
(INCLUDES LUNCH)**

# **2003 FALL CONFERENCE**